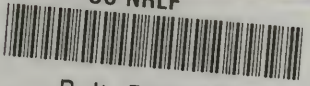


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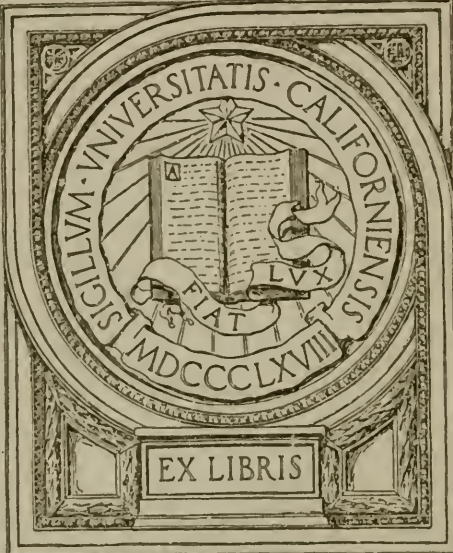
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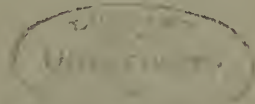
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# REGULATION OF PUBLIC UTILITIES

A Comparison of the New York and  
the Wisconsin Public Utilities Bills





REGULATION  
OF  
PUBLIC UTILITIES

A COMPARISON OF THE NEW  
YORK AND THE WISCONSIN  
PUBLIC UTILITIES BILLS

BY  
ALLEN RIPLEY FOOTE

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# REGULATION OF PUBLIC UTILITIES.

NEW YORK PUBLIC UTILITIES BILL.

WISCONSIN PUBLIC UTILITIES BILL.

## COMPARISON OF PROVISIONS.

NOTE: This comparison was made in 1907, before either the New York or the Wisconsin bill was enacted into law. Each bill was subsequently amended before passage, and the laws have also been amended.

### MOTIF.

*The motif of the New York bill* is arbitrary power—a club. It is destructive. It abolishes the state board of railroad commissioners; the state commission of gas and electricity; the state or city office of inspector of gas meters, and the New York board of rapid transit railroad commissioners. It gives all the powers of these boards, officers and commissions to two new commissions, one for New York City and one for all other counties of the state. The members of these commissions are appointed by the governor, with the consent of the senate, for a term of five years, after the initial term, and removable by the governor for cause.

*The motif of the Wisconsin bill* is the establishment of the principles of reciprocal justice between public utilities and the users of the services they render. It gives additional powers to the existing board of railroad commissioners, a board composed of three commissioners, appointed by the governor with the consent of the senate, for a term of six years, after the initial term, and removable by the governor for cause.

### JURISDICTION.

*The New York bill* places under the jurisdiction of its commissioners all railroads; street railroads; common carriers; the manufacture and distribution of gas and electricity for light, heat and power; underground conduits or ducts for electrical conductors (section 66—1); all transportation of persons or property; and all persons, corporations and

municipalities (section 66—4, 5, 6, 7, 8, & 9) owning, leasing, operating and controlling the same. Street railroads are included in the provisions for railroads and common carriers. Telephone and water utilities are omitted.

*The Wisconsin bill* places under the jurisdiction of the state board of railroad commissioners the manufacture and distribution of gas and electricity for light, heat and power; telephone and water services; and all persons, corporations and municipalities owning, leasing, operating and controlling the same. The commission has complete jurisdiction of railway companies (chapter 362, laws of 1905) and is given complete jurisdiction of street railways by a bill now pending.

#### ORGANIZATION AND EQUIPMENT OF COMMISSIONS.

*Provisions in both bills* are ample for the organization and equipment of commissions to enable them to do effective work; and for all purposes of investigation and examinations to obtain information by which to guide their actions and formulate their decisions, their powers are sufficient; and the means provided for the exercise of such powers are ample.

#### PURPOSE OF THE COMMISSIONS.

*The purpose of the commissions in both states*, is declared in both bills to be the securing of adequate service and reasonable rates. To this end all rebates, discriminations, special privileges and favors to any officer, agent or employe of the commission, or to any person, firm, corporation or association are declared to be unlawful and are strictly prohibited. All equipment and methods of manufacturing, distributing, measuring and charging for services are placed under supervision and examination, and the quality, purity and pressure of the product sold are made the subject of continuous tests and observation. The publication of schedules for inspection by consumers or users is required, and it is made unlawful to charge greater or less rates than those shown on published schedules.

#### COMPETITION AS A MEANS OF SECURING ADEQUATE SERVICE AND REASONABLE RATES.

*The New York bill* prohibits the exercise of any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not actually exercised, without authority of a commission. (Section 68.) This gives the New York commission full power to prohibit competition.

*The Wisconsin bill* gives power to the commission to require, for a reasonable compensation, the joint use by any public utility of any con-



duits, subways, poles or other equipment on, over or under any street or highway. (Section 4—1.) It also provides that "no license or franchise shall be granted where there is in operation, under an indeterminate permit, a public utility engaged in a similar service without first securing from the commission a declaration, after hearing, of reasonable necessity," and that "any existing franchise which shall contain any terms interfering with the existence of such second public utility is hereby amended to permit municipality to grant license or permit for operation of second public utility." (Section 74.) Telephone companies are not included in these provisions since they are by law permitted to operate without franchise.

This gives the Wisconsin commission full power to prohibit competition, subject to review by the courts.

#### MUNICIPAL OWNERSHIP.

*The New York bill* provides (section 68) that no municipality shall build, maintain and operate for other than municipal purposes any works or system for the manufacture and supplying of gas or electricity for lighting purposes without a certificate of authority granted by the commission.

This gives the New York commission full power to prohibit municipal ownership.

*The Wisconsin bill* provides (section 76) that "every license, permit or franchise hereafter granted to any public utility shall be subject to the provision that the municipality in which it is situate may purchase the property of such utility within said municipality actually used and useful for the convenience of the public, at any time as provided herein, paying therefor the then value of such property as determined by the commission. Any such municipality is *authorized to purchase* such property, and every public utility operating under such indeterminate franchise is *required to sell* such property at the value and according to the terms and conditions determined by the commission, subject to appeal as herein provided."

Section 77 provides that a public utility operating under an existing franchise may by filing a written surrender thereof, receive by operation of law an indeterminate permit, and that the filing of such surrender constitutes a waiver of the right to insist upon the fulfillment of any contract relating to rate, charge or service regulated by the act.

Section 78 provides that the acceptance of an indeterminate franchise shall be deemed a consent to a future purchase of the property by the municipality in which the major part of it is situated at the value and under the terms and conditions fixed by the commission and shall be deemed a waiver of the constitutional right arising under a provision

of the state constitution requiring the necessity of the taking to be established by the verdict of a jury.

Section 79 gives the municipality power: (1) to construct and operate a plant; (2) to purchase by agreement with any public utility any part of any plant on terms approved by the commission after hearing; (3) to acquire by condemnation any plant operated under a franchise existing at the time the act takes effect; (4) to acquire property of a public utility operating under an indeterminate permit.

Section 80 provides for an action to condemn the property of the public utility operating under a franchise granted prior to the time this act takes effect.

Section 81 provides that if the municipality shall have determined to acquire a plant and the public utility has consented to the taking over of such plant by the acceptance of an indeterminate permit, or in case the public utility shall not have consented to such taking by such acceptance, if a jury shall have found that a necessity exists for the taking of such plant, then the municipality shall give notice of such determination and of such consent or such verdict to the public utility and to the commission.

Section 82 provides that the commission shall thereupon, after public hearing and within three months, fix and determine the then value of the property and all terms and conditions of sale and purchase. This value and the terms and conditions shall constitute the compensation and terms and conditions of sale.

Section 83 provides that the public utility of the municipality may prosecute an action to alter or amend the determination of the commission.

#### VALUATION OF UTILITIES.

*The New York bill* contains no provision for the valuation of utilities.

The Wisconsin bill provides in sections 5 to 7 inclusive, for the valuation of the property of public utilities, public hearings on the subject of valuation, final determination of value and re-valuations. Section 19 provides for full publication of values. Section 86 provides for a re-hearing and re-valuation if the value for the purposes of municipal purchase fixed by the previous order of the commission be adjudged to be unlawful.

#### CONTROL OF CAPITALIZATION.

*The New York bill* in sections 54, 55, 69 & 70 gives power to the commission to control the issue and transfer of stocks, bonds and other evidences of indebtedness as a means of controlling the capitalization of public utilities.

*The Wisconsin bill* has no provision to prevent stock-watering. Under its provisions rates are to be computed on true value and it was regarded better to permit capitalization to be regulated by other measures now pending before the legislature.

UNIFORM SYSTEM OF ACCOUNTING.

*The New York bill* provides in section 52 that "each commission may, whenever it deems advisable, establish a uniform system of accounts to be used by railroad and street railroad corporations or other common carriers, and may prescribe the manner in which such accounts shall be kept."

It provides in section 66—4 that each commission shall "have power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by the persons, corporations and *municipalities* engaged in the manufacture, sale and distribution of gas and electricity for light and power."

It will be observed that these *provisions are permissive*, not mandatory.

*The Wisconsin bill* provides:

Section 8. 1. "Every public utility shall keep and render to the commission in the manner and form prescribed by the commission uniform accounts of all business transacted."

2. Every public utility engaged directly or indirectly in any other business than that of the production, transmission or furnishing of heat, light, water or power or the conveyance of telephone messages shall, if required by the commission, keep and render separately to the commission in like manner and form the accounts of all such other business, in which case all the provisions of this act shall apply with like force and effect to the books, accounts, papers and records of such other business.

Section 9. "The commission shall prescribe the form of all books, accounts, papers and records to be kept for this purpose, and every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commission and to comply with all directions of the commission relating to such books, accounts, papers and records.

Section 10. The commission shall cause to be prepared suitable blanks for carrying out the purposes of this act, and shall when necessary, furnish such blanks to each public utility.

Section 11. No public utility shall keep any other books, accounts, papers or records of the business transacted than those prescribed or approved by the commission.

It will be observed that all of these sections are *mandatory*. Their enforcement will make intelligent regulation possible.

## PUBLIC UTILITY REPORTS.

*The New York bill* provides in section 46, that "each commission shall prescribe the form of annual reports required to be made by common carriers, railroad and street railroad corporations; may require such reports to contain information in relation to rates or regulations concerning fares or freight, agreements or contracts affecting the same, so far as such rates or regulations pertain to transportation within the state. The commission may also require such corporations to file monthly reports of earnings and expenses within a specified period."

In respect to gas and electricity, section 66—6 "requires every person and corporation under its supervision to submit to it an annual report showing in detail:

1. Amount of authorized, issued and outstanding capital stock.
2. Amount authorized bonded indebtedness, and amount of bonds and other forms of indebtedness issued and outstanding.
3. Receipts and expenditures during preceding year.
4. Amount paid as dividends on stock, and interest on bonds.
5. Name of, and amount paid as salary to, each officer, and the amount paid as wages to its employes.
6. Location of plants and systems, description of property and franchises, and how each franchise was acquired.
7. Any other facts as may be required by the commission.

*The Wisconsin bill* provides in section 18 that "each public utility shall furnish to the commission in such form and at such times as the commission shall require, such accounts, reports and information as shall show in itemized detail:

1. The depreciation per unit;
2. Salaries and wages separately per unit;
3. Legal expenses per unit;
4. Taxes and rentals separately per unit;
5. Quantity and value of material used per unit;
6. Receipts from residuals, by-products, service or other sales separately per unit;
7. Total and net cost per unit;
8. Gross and net profit per unit;
9. Dividends and interests per unit;
10. Surplus or reserve per unit;
11. Price per unit paid by customers; and in addition such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the commission may prescribe in order to show completely and in detail the entire operation of the public utility in furnishing the unit of its product or service to the public.

Section 42 provides that:

1. Every public utility shall furnish to the commission all information required.

2. Any public utility receiving from the commission any blanks with directions to fill the same, shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, etc.

3. Whenever required by the commission, every public utility shall deliver to the commission, any or all maps, profiles, contracts, reports of engineers and all documents, books, accounts, papers and records or copies of any or all of the same, with a complete inventory of all its property, in such form as the commission may direct.

#### REASONABLE RATES OF CHARGES.

*The New York bill* provides in section 26, that "all charges made or demanded by any person, corporation or common carrier shall be just and reasonable and not more than allowed by law or by order of a commission."

Section 28. "Every common carrier shall file with a commission and shall print and keep open to public inspection schedules showing the rates of fare and charges, and separately all terminals, storage, icing and other charges."

Section 29. "Unless a commission otherwise orders no change shall be made in any rate, fare or charge which shall have been filed and published by a common carrier except after thirty days' notice to the commission and publication for thirty days. The commission, for good cause shown, may allow the changes in rates without requiring thirty days' notice."

Section 30 requires filing with a commission "the name of the several carriers which are parties to a joint tariff and copies of every contract, agreement or arrangement with any other carrier or carriers relating in any way to the transportation of passengers, property or freight."

Section 49 provides that "whenever a commission shall be of opinion, after hearing upon a complaint, that the rates, fares or charges demanded, exacted, charged or collected, or that the regulations or practices, are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of any provision of law, the commission shall determine the just and reasonable rates to be thereafter observed and in force as the maximum, and shall fix the same by orders to be served upon the common carriers."

Section 71 provides that complaints as to quality and price of gas and electricity may be made in writing by the mayor of a city, the trustees of a village, or the board of a town, or by not less than one

hundred consumers in cities of the first and second class, not less than fifty in cities of the third class, or not less than twenty-five elsewhere, and the commission shall investigate the complaint.

Section 72 provides that the commission shall cause notice to be served upon any person or corporation affected by the complaint and give them opportunity to be heard. The same procedure when an investigation is instituted on motion of the commission. After hearing and investigation, the commission within lawful limits may, by order, fix the maximum price of gas or electricity or may order improvements in the service. The price so fixed shall be the maximum price to be charged until the commission upon complaint, or upon an investigation conducted by its own motion, again fix the maximum price.

In determining the price the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question, although not set forth in the complaint and not within the allegations contained therein.

Section 75 provides "if it be alleged and established in an action brought in any court for the collection of any charge for gas or electricity, that a price has been demanded in excess of that fixed by a commission or by statute, no recovery shall be had therein, but the fact that such excessive charges have been made shall be a complete defense to such action.

*The Wisconsin bill provides:*

Section 27, for the filing of schedules showing all rates, tolls and charges in force at the time for every service performed, which shall not exceed the rates in force April 1, 1907.

Section 28, for the filing of rules and regulations affecting charges.

Section 29, for copies of schedules for inspection by consumers.

Section 30, for schedules of joint rates or charges.

Section 31, no change to be made except on ten days' notice to commission.

Section 32, for new schedules to be filed for inspection by consumers.

Section 33, declares it to be unlawful to charge a greater or less rate than shown on schedules.

Section 34, that commission may prescribe changes in form of schedules.

Section 35, that commission shall provide comprehensive classifications of service that shall be uniform throughout the state.

Section 46, that substitute rates and regulations may be ordered after investigation.

Section 47, that if, after hearing, the public utility has been found at fault as to any rate or service it shall pay the expenses incurred by the commission upon the investigation.

Section 48, that separate hearings may be had on each rate.

Section 60, that orders fixing rates and regulations, certified to utility, take effect in twenty days, unless otherwise specified.

Section 62, commission may rescind, alter or amend orders.

Section 63, rates and regulations fixed by commission remain in force until otherwise ordered.

Section 99 provides that the commission shall have emergency power to temporarily alter, amend, or, with the consent of the utility concerned, suspend any existing rate and to apply the change to one or more utilities in any portion of the state.

Section 100 gives commission full power to regulate unreasonable, unjust or discriminatory rates in case not specifically mentioned.

Section 105. 1. Unless the commission shall order otherwise, it shall be unlawful for any public utility to demand, collect or receive a greater compensation for any service than the charge fixed in the lowest schedules of rates for the same service on the first day of April, 1907.

2. Every public utility shall file copies of all schedules of rates and charges, including joint rates, in force on the first day of April, 1907 and all in force at any time subsequent to said date.

3. Every public utility desiring to advance or discontinue any rate may make application to the commission.

4. If the commission find the change applied for reasonable, it shall grant the application, either in whole or in part.

5. Any public utility being dissatisfied with any order of the commission made under the provisions of this section, may commence an action against the commission in the circuit court in the manner provided in sections 64 to 73 inclusive, of this act.

#### EXTENSIONS, IMPROVEMENTS AND REPAIRS.

*The New York bill* gives the commission power, in section 27, to order the construction of switches and sidetracks for the accommodation of shippers and to specify the reasonable compensation for the construction, establishment and maintenance of the same.

Section 37 requires sufficient cars and motive power, and that "the commission shall have power to make, and by order shall make, reasonable regulations for the furnishing and distribution of freight cars to shippers, for the switching of the same, for the loading and unloading thereof, for demurrage charges in respect thereto, and for the weighing of cars and freight offered for shipment.

Section 39 requires continuous carriage from place of shipment to place of destination.

Section 50, to order repairs, improvements, changes or additions to promote the security or convenience of the public or employes, or in order to secure adequate service or facilities.

Section 51, to order changes in time schedules, the running of trains, additional cars and trains.

Section 66:

1. General supervision of all persons and corporations having authority for the purpose of furnishing gas or electricity, or maintaining underground conduits or ducts for electrical conductors.

2. Investigate quality, methods employed in manufacturing and supplying, and order improvements.

3. Power to fix standards of illuminating power and purity of gas; methods of regulation of the electric supply system; require gas to equal standard; regulations as to pressure, and of its own motion, examine and investigate methods employed in manufacturing, delivering and supplying gas.

5. See that property is properly maintained and operated.

8. To enter in or upon and to inspect the property, buildings, plants, factories, power houses and offices.

Section 67, to appoint inspectors and prohibit the use of gas and electric meters not inspected, approved, stamped or marked by an inspector of the commission; every gas and electric corporation shall provide and keep suitable apparatus to be approved, stamped or marked by the commission to be used in testing, etc., and shall make tests in presence of consumer if desired.

Section 71, investigate complaints as to quality or price of gas and electricity.

Section 72, after investigation may, by order, order such improvements in the manufacture, supply or transmission or in methods employed, as will in its judgment improve the service.

*The Wisconsin bill* provides in section 4, that the commission may order joint use of conduits, subways, poles or other equipment, and by order prescribe reasonable conditions and compensation therefor.

Section 16, keep informed of all new constructions, extensions and additions to property.

Section 22, prescribe for each kind of utility a convenient standard unit of product or service.

Section 23, fix adequate and serviceable standards of measurements, quality, pressure, initial voltage and prescribe regulations for examinations and testing; rules, regulations, specifications and standards to secure accuracy in meters and appliances. Nothing contained in this section shall limit in any manner any powers or authority vested in municipal corporations as provided in section 87.

Section 24, examine and test all measuring devices and test the same



upon request of consumer; any consumer may have tests made on payment of fees fixed by commission,—fee to be paid by utility if the appliance is found to be defective.

Section 25, commission may purchase apparatus and measuring instruments.

Section 26, may enter premises for the purpose of making examinations and tests, and to set up apparatus needed for tests.

Section 36, adopt rules to govern all inspections, tests, audits, investigations and hearings.

Section 37, inquire into management of business and keep informed as to manner and methods.

Section 46, if any rates, tolls, charges or schedules, or regulations, measurement, practice, act or service complained of shall be found to be unjust, unreasonable, insufficient or preferential, the commission shall have power to substitute therefor such other regulation, measurement, practice, service or act and to make such order respecting the same as shall be just and reasonable.

Section 60:

4. Orders fixing regulations to take effect in twenty days unless otherwise specified.

Section 63, regulations fixed by commission to remain in force until otherwise ordered by court.

Section 87, every municipal council shall have power,

1. To determine by contract, ordinance or otherwise, the quality and character of each kind of product or service to be furnished or rendered by any public utility furnishing any product or service within said municipality and all other terms and conditions not inconsistent with this act upon which such public utility may be permitted to occupy the streets, highways or other public property within such municipality and such contract, ordinance or other determination of such municipality shall be in force and prima facie reasonable. Upon complaint made by such public utility or by any qualified complainant as provided in section 1797m—43, the commission shall set a hearing as provided in sections 1797m—45 and 1797m—46, and if it shall find such contract, ordinance or other determination to be unreasonable, such contract, ordinance or other determination shall be void.

2. To require of any public utility by ordinance or otherwise such additions and extensions to its physical plant within said municipality as shall be reasonable and necessary in the interest of the public, and to designate the location and nature of all such additions and extensions, the time within which they must be completed and all conditions under which they must be constructed subject to review by the commission as provided in subdivision 1 of this section.

3. To provide for a penalty for non-compliance with the provisions of any ordinance or resolution adopted pursuant to the provisions hereof.

4. The power and authority granted in this section shall exist and be vested in said municipalities, anything in this act to the contrary notwithstanding.

Section 97, fine or imprisonment for destroying, interfering with or injuring apparatus belonging to commission.

#### INVESTIGATION OF ACCIDENTS.

*The New York bill* provides in section 47, that "each commission shall investigate the cause of all accidents on any railroad or street railroad within its district which result in loss of life or injury to persons or property, and which in its judgment shall require investigation. Every common carrier, railroad corporation and street railroad corporation is hereby required to give immediate notice to the commission of every accident happening upon any line of railroad or street railroad owned, operated, controlled or leased by it, within the territory over which such commission has jurisdiction, in such manner as the commission may direct. Such notice shall not be admitted as evidence or used for any purpose against such common carrier, railroad corporation or street railroad corporation giving such notice in any suit or action for damages growing out of any matter mentioned in said notice.

*The Wisconsin bill* provides in section 101, that:

1. Every public utility shall, whenever an accident attended with loss of human life occurs within this state upon its premises or directly or indirectly arising from or connected with its maintenance or operation, give immediate notice thereof to the commission.

2. In the event of any such accident the commission, if it deem the public interest require it, shall cause an investigation to be made forthwith; which investigation shall be held in the locality of the accident, unless for greater convenience of those concerned it shall order such investigation to be held at some other place; and said investigation may be adjourned from place to place as may be found necessary and convenient. The commission shall seasonably notify the public utility of the time and place of the investigation.

#### LIABILITY FOR LOSS OR DAMAGE BY VIOLATION OF ACT.

*The New York bill* in section 38 fixes liability for damage to property while in transit, and gives provisions to be incorporated in bills of lading.

Section 40 fixed liability for loss or damage caused by violation of this act, the laws of the state or the orders of the commission.

*The Wisconsin bill* provides in section 93, that "If any public utility shall do or cause to be done or permit to be done any matter, act or thing

in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing required to be done by it, such public utility shall be liable to the person, firm or corporation injured thereby in treble the amount of damages sustained in consequence of such violation; provided that any recovery as in this section provided shall in no manner affect a recovery by the state of the penalty prescribed for such violation."

#### SERVICE AND EFFECT OF ORDERS.

*The New York bill* in section 23, provides that, "Every order of a commission shall be served upon every person or corporation to be affected thereby, either by personal delivery of a certified copy thereof, or by mailing a certified copy thereof in a sealed package with postage prepaid, to the person to be affected thereby, or, in the case of a corporation, to any officer or agent thereof upon whom a summons may be served in accordance with the provisions of the code of civil procedure. It shall be the duty of every person and corporation to notify the commission forthwith, in writing, of the receipt of the certified copy of every order so served, and in the case of a corporation such notification must be signed and acknowledged by a person or officer duly authorized by the corporation to admit such service. Within a time specified in the order of the commission every person and corporation upon whom it is served must, if so required in the order, notify the commission in like manner whether the terms of the order are accepted and will be obeyed.

"Every order of a commission shall take effect at a time therein specified and shall continue in force for a period therein designated unless earlier modified or abrogated by the commission, or unless such order be unauthorized by this or any other act or be in violation of a provision of the constitution of the state or of the United States."

*The Wisconsin bill* in section 60, provides that,

"1. Whenever, upon an investigation made under the provisions of this act, the commission shall find any existing rates, tolls, charges, schedules or joint rate or rates to be unjust, unreasonable, insufficient or unjustly discriminatory or to be preferential or otherwise in violation of any of the provisions of this act, the commission shall determine and by order fix reasonable rates, tolls, charges, schedules or joint rates to be imposed, observed and followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise in violation of any of the provisions of this act.

"2. Whenever, upon an investigation made under the provisions of this act, the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient, preferential,

unjustly discriminatory or otherwise in violation of any of the provisions of this act; or shall find that any service is inadequate or that any service which can be reasonably demanded cannot be obtained, the commission shall determine and declare and by order fix reasonable measurements, regulations, acts, practices or service to be furnished, imposed, observed and followed in the future in lieu of those found to be unjust, unreasonable, insufficient, preferential, unjustly discriminatory, inadequate or otherwise in violation of this act, as the case may be, and shall make such other order respecting such measurement, regulation, act, practice or service as shall be just and reasonable.

"3. Whenever, upon an investigation made under the provisions of this act, the commission shall find that any rate, toll, charge, schedule or joint rate or rates is unjust, unreasonable, insufficient, or unjustly discriminatory or preferential or otherwise in violation of any of the provisions of this act, or that any measurement, regulation, practice, act or service complained of is unjust, unreasonable, insufficient, preferential or otherwise in violation of any of the provisions of this act, or it shall find that any service is inadequate or that any service which can reasonably be demanded cannot be obtained, the commission shall ascertain and declare and by order fix the expenses incurred by the commission upon such investigation and shall by such order direct such public utility to pay to the state treasurer within twenty days thereafter such expenses so incurred.

"4. The commission shall cause a certified copy of all such orders to be delivered to an officer or agent of the public utility affected thereby, and all such orders shall of their own force take effect and become operative twenty days after service thereof, unless a different time be provided by said order."

#### FRANCHISE PRIVILEGES.

*The New York bill* in section 53 provides that, "No railroad corporation, street railroad corporation or common carrier shall begin the construction of a railroad, or any extension thereof, nor shall it exercise any franchise or right under any provision of the railroad law, or of any other law, not heretofore lawfully exercised, without first having obtained the permission and approval of the proper commission. The commission within whose district such construction is to be made or within whose district such franchise or right is to be exercised, shall have power to grant the permission and approval herein specified whenever it shall, after due hearing, determine that such construction or such exercise of the franchise or privilege is necessary or convenient for the public service. And if such construction is to be made, or such franchise to be exercised in both districts, the approval of both commissions shall be secured."

Section 54 provides that, "No franchise nor any right to or under any franchise, to own or operate a railroad or street railroad shall be assigned, transferred or leased, nor shall any contract, or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever, unless the assignment, transfer, lease, contract or agreement shall have been approved by the proper commission."

Section 68 provides that, "No gas or electrical corporation shall begin construction or exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised without first having obtained the permission and approval of the proper commission."

Section 70 provides that, "No gas or electric corporation shall transfer or lease its franchise, works or system or any part of such franchise, or works or system to any other person or corporation, or contract for the operation of its works and system, without the written consent of the proper commission."

*The Wisconsin bill* provides in section 74:

"1. No license, permit or franchise shall be granted to any person, co-partnership or corporation to own, operate, manage or control any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power in any municipality where there is in operation under an indeterminate permit as provided in this act, a public utility engaged in similar service, without first securing from the commission a declaration, after a public hearing of all parties interested, that there is reasonable necessity therefor.

"2. Any existing permit, license or franchise which shall contain any term whatsoever interfering with the existence of such second public utility is hereby amended in such a manner as to permit such municipality to grant an indeterminate permit for the operation of such second public utility pursuant to the provisions of this act.

"3. No municipality shall hereafter construct any such plant or equipment where there is in operation under an indeterminate permit as provided in this act, in such municipality a public utility engaged in similar service, without first securing from the commission a declaration, after a public hearing of all parties interested, that there is reasonable necessity therefor. But nothing in this section shall be construed as preventing a municipality acquiring any existing plant by purchase or by condemnation as hereinafter provided.

"4. Nothing in this section shall be construed so as to prevent the granting of an indeterminate permit or the construction of a municipal plant where the existing public utility is operating without an indeterminate permit as provided in this act."

Section 75 provides that, "No license, permit or franchise to own, operate, manage, or control any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power shall be hereafter granted or transferred, except to a corporation duly organized under the laws of the state of Wisconsin."

Section 76 provides that, "Every license, permit or franchise hereafter granted to any public utility shall have the effect of an indeterminate permit subject to the provisions of this act, and subject to the provision that the municipality in which the major part of its property is situate may purchase the property of such public utility actually used and useful for the convenience of the public at any time as provided herein, paying therefor the then value of such property as determined by the commission and according to the terms and conditions fixed by said commission. Any such municipality is authorized to purchase such property and every such public utility is required to sell such property at the value and according to the terms and conditions determined by the commission as herein provided."

Section 77 provides that, "Any public utility operating under an existing license, permit or franchise shall, upon filing at any time prior to the expiration of such license, permit or franchise and prior to January 1, 1908, with the clerk of the municipality which granted such franchise and with the commission, a written declaration legally executed, that it surrenders such license, permit or franchise, receive by operation of law in lieu thereof, an indeterminate permit as provided in this act; and such public utility shall hold such permit under all the terms, conditions and limitations of this act. The filing of such declaration shall be deemed a waiver by such public utility of the right to insist upon the fulfillment of any contract theretofore entered into relating to any rate, charge or service regulated by this act.

#### PRACTICE BEFORE COMMISSIONS; IMMUNITY OF WITNESSES.

*The New York bill* provides:

Section 17. Certified copies of papers filed to be evidence.

Section 18. Fees to be charged and collected by the commission.

Section 19. Attendance of witnesses and their fees.

Section 20. Prescribes methods of practice before the commission and of granting immunity to witnesses, and that the commission shall not be bound by the technical rules of evidence.

Section 22. Re-hearing before the commission.

Section 45. Power to administer oaths in all parts of the state to witnesses summoned to testify in any inquiry; conduct hearings and take testimony.

Section 48. Gives each commission power, of its own motion, to investigate or make inquiry, in a manner to be determined by it, as to

any act or thing done or omitted to be done by any common carrier, railroad or street railroad corporation, and the commission must make such inquiry of any act or thing done or omitted to be done in violation of any provision of law or in violation of any order of the commission.

Section 66—10. Power to subpoena witnesses, take testimony and administer oaths.

*The Wisconsin bill* provides in section 6, that before final determination of the value of a utility, the commission shall, after notice to the public utility, hold a public hearing as to such valuation in the manner prescribed.

The commission shall have power :

Section 36. To adopt rules as to practice and procedure.

Section 37. To inquire into the management of the business of all public utilities.

Section 38. To inspect books, etc., of the utility.

Section 39. To compel utility to produce books and records from without the state.

Section 41. The commission shall have power to appoint, by an order in writing, an agent for the purpose of making any investigation with regard to any public utility, whose duties shall be prescribed in said order. Such agent shall have every inquisitorial power granted to the railroad commission or granted by law to a court commission. Any number of investigations may be conducted contemporaneously through different agents. The decisions of the commission shall be based upon its examination of all testimony and records. The commission may take further testimony, order further investigation and hear further argument.

Section 43. Any one of certain public and quasi public organizations or any twenty-five persons may complain as to rates, etc.

Section 49. Commission may upon its own motion initiate an investigation.

Section 51 provides for notice of hearing to all parties in interest and the conducting of hearings.

Section 53 provides that the commissioners shall have power to administer oaths, certify to official acts, issue subpoenas, compel attendance of witnesses, the production of books, accounts, papers, records, documents, and take testimony, and that it shall be the duty of the circuit court of any county or the judge thereof, on application by the commission to compel obedience to its orders.

Section 54 provides for witness fees and when to be paid.

Section 55 provides for the taking of depositions of witnesses.

Section 56. "A full and complete record shall be kept of all proceedings had before the commission or its agent on any formal investigation had and all testimony shall be taken down by the stenographer appointed by the commission."

Section 58 provides that a certified transcribed copy of evidence shall have same effect as original evidence.

Section 59 provides for furnishing free of cost to all parties to an investigation of a copy of evidence.

Section 71. "In all actions and proceedings in court, arising under this act all processes shall be served and the practice and rules of evidence shall be the same as in civil actions, except as otherwise herein provided. Every sheriff or other officer empowered to execute civil processes shall execute any process issued under the provisions of this act and shall receive such compensation therefor as may be prescribed by law for similar services."

Section 72. "No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provision of this act on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying."

Section 73. "Upon application of any person the commission shall furnish certified copies under the seal of the commission, of any order made by it, which shall be prima facie evidence of the facts stated therein."

Section 86 provides for a re-hearing for the determination of value.

Section 102. "1. The commission shall inquire into any neglect or violation of the laws of this state by any public utility doing business therein, or by the officers, agents or employes thereof or by any person operating the plant of any public utility, and shall have the power and it shall be its duty to enforce the provisions of this act as well as all other laws relating to public utilities, and to report all violations thereof to the attorney general.

"2. Upon the request of the commission it shall be the duty of the attorney general or the district attorney of the proper county to aid in any investigation, hearing or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act and of all other laws of this state relating to public utilities and for the punishment of all violations thereof.

"4. The commission shall have authority to employ counsel in any proceeding, investigation, hearing or trial."

Section 104. "This act shall not have the effect to release or waive any right of action by the state or by any person for any right, penalty or forfeiture which may have arisen or which may hereafter arise, under any law of this state; etc."



## FINES, FORFEITURES AND PENALTIES.

*The New York bill:*

Section 56. 1. Every common carrier, railroad corporation and street railroad corporation and all officers and agents of any common carrier, railroad corporation or street railroad corporation shall obey, observe and comply with every order made by the commission, under authority of this act, so long as the same shall be and remain in force. Any common carrier, railroad corporation or street railroad corporation which shall violate any provision of this act, or which fails, omits or neglects to obey, observe or comply with any order or any direction or requirement of the commission, shall forfeit to the people of the state of New York not to exceed the sum of five thousand dollars for each and every offense; every violation of any such order or direction or requirement, or of this act, shall be a separate and distinct offense, and, in case of a continuing violation, every day's continuance thereof shall be and be deemed to be a separate and distinct offense.

2. Every officer and agent of any such common carrier or corporation who shall violate, or who procures, aid or abets any violation by any such common carrier or corporation of any provision of this act, or who shall fail to obey, observe and comply with any order of the commission or any provision of an order of the commission, or who procures, aids or abets any such common carrier or corporation in its failure to obey, observe and comply with any such order or provision, shall be guilty of a misdemeanor.

Section 58. 1. Any corporation, other than a common carrier, railroad corporation or street railroad corporation, which shall violate any provision of this act, or shall fail to obey, observe and comply with every order made by the commission under authority of this act, so long as the same shall be and remain in force, shall forfeit to the people of the state of New York a sum not exceeding one thousand dollars for each and every offense; every such violation shall be a separate and distinct offense, and the penalty or forfeiture thereof shall be recovered in an action as provided in section 59 of this act.

2. Every person who, either individually or acting as an officer or agent of a corporation other than a common carrier, railroad corporation or street railroad corporation, shall violate any provision of this act or fail to obey, observe or comply with any order made by the commission under this act, so long as the same shall be or remain in force, or who shall procure, aid or abet any such corporation in its violation of this act or in its failure to obey, observe or comply with any such order, shall be guilty of a misdemeanor.

3. In construing and enforcing the provisions of this act relating to forfeitures and penalties the act of any director, officer or other

person acting for or employed by any common carrier, railroad corporation, street railroad corporation or corporation, acting within the scope of his official duties or employment, shall be in every case and be deemed to be the act of such common carrier, railroad corporation, street railroad corporation or corporation.

Section 59. An action to recover for a penalty or a forfeiture under this act may be brought in any court of competent jurisdiction in this state in the name of the people of the state of New York, and shall be commenced and prosecuted to final judgment by counsel to the commission. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order of the commission the defendant was actually and in good faith prosecuting a suit, action proceeding in the courts to set aside such order, the court shall remit the penalties or forfeitures incurred during the pendency of such suit, action or proceeding. All moneys recovered in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund.

Section 73. Same as 58, applies to gas and electric corporations.

Section 75. If it be alleged and established in an action brought in any court for the collection of any charge for gas or electricity, that a price has been demanded in excess of that fixed by the commission or by statute in the municipality wherein the action arose, no recovery shall be had therein, but the fact that such excessive charges have been made shall be a complete defense to such action.

*The Wisconsin bill:*

Section 93. If any public utility shall do or cause to be done or permit to be done any matter, act or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing required to be done by it, such public utility shall be liable to the person, firm or corporation injured thereby in treble the amount of damages sustained in consequence of such violation; provided that any recovery as in this section provided, shall in no manner affect a recovery by the state of the penalty prescribed for such violation.

Section 94 provides fines for any utility officer, agent or employe who fails to obey the orders of the commission.

Section 95 provides fines for any utility violating the provisions of this act or refusal to obey the orders of the commission.

Section 96 provides fines for any officer of town, village or city who fails to obey orders of commission.

Section 97 provides fine or imprisonment for destroying, interfering with or injuring apparatus belonging to the commission.

Section 98 provides that every day's failure to comply with an order of the commission shall be a distinct offense.

Section 102. 3. Any forfeiture or penalty herein provided shall be recovered and suit therein shall be brought in the name of the state of Wisconsin in the circuit court for Dane county. Complaint for the collection of any such forfeiture may be made by the commission or any member thereof, and when so made the action so commenced shall be prosecuted by the attorney general.

Section 104. All penalties and forfeitures accruing under this act shall be cumulative and a suit for any recovery of one shall not be a bar to the recovery of any other penalty.

#### COMPLAINT AGAINST UTILITIES.

*The New York bill* section 27 provides that, "If any railroad corporation shall fail to install or operate any switch connection with a lateral line of railroad or any side track and switch connection after written application thereof had been made to it, any corporation or person interested may present the facts to a commission by written petition, and the commission shall investigate the matters stated in such petition, and give such hearing thereon as it may deem necessary and proper. If the commission be of opinion that it is safe and practicable to have a connection, substantially as prayed for, established or maintained, and that the business to be done thereon justifies the construction and maintenance thereof, it shall make an order directing the construction and establishment thereof, specifying the reasonable compensation to be paid for the construction, establishment and maintenance thereof."

Section 48. 2. Complaints may be made to the proper commission by any person or corporation aggrieved, by petition or complaint in writing setting forth any thing or act done or omitted to be done by any common carrier, railroad corporation or street railroad corporation in violation, or claimed to be in violation of any provision of law or of the terms and conditions of its franchise or charter or of any order of the commission. Upon the presentation of such a complaint the commission shall cause a copy thereof to be forwarded to the person or corporation complained of, accompanied by an order, directed to such person or corporation, requiring that the matters complained of be satisfied, or that the charges be answered in writing within a time to be specified by the commission. If the person or corporation complained of shall make reparation for any injury alleged and shall cease to commit, or to permit, the violation of law, franchise or order charged in the complaint, and shall notify the commission of that fact before the time allowed for answer, the commission need take no further action

upon the charges. If, however, the charges contained in such petition be not thus satisfied, and it shall appear to the commission that there are reasonable grounds therefor, it shall investigate such charges in such manner and by such means as it shall deem proper, and take such action within its powers as the facts justify.

3. Whenever either commission shall investigate any matter complained of by any person or corporation aggrieved by any act or omission of a common carrier, railroad corporation or street railroad corporation under this section it shall be its duty to make and file an order either dismissing the petition or complaint or directing the common carrier, railroad corporation or street railroad corporation complained of to satisfy the cause of complaint in whole or to the extent which the commission may specify and require.

Section 49 provides for the hearing of complaints regarding rates, fares or charges.

Section 51 provides for the hearing of complaints regarding time schedules and the running of additional cars and trains.

Section 67. 2. No corporation or person shall furnish or put in use any gas meter which shall not have been inspected, proved and sealed, or any electric meter which shall not have been inspected, approved, stamped or marked by an inspector of the commission. Every gas and electrical corporation shall provide or keep in and upon its premises a suitable and proper apparatus, to be approved and stamped or marked by the commission for testing and proving the accuracy of gas and electric meters furnished for use by it, and by which apparatus every meter may and shall be tested, on the written request of the consumer to whom the same shall be furnished, and in his presence if he desires it.

If any consumer to whom a meter has been furnished, shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested; if the same on being so tested shall be found to be, four per cent, if an electric meter, or two per cent, if a gas meter, defective or incorrect to the prejudice of the consumer, the inspector shall order the gas or electrical corporation forthwith to remove the same and to place instead thereof a correct meter, and the expense of such inspection and test shall be borne by the corporation; if the same on being so tested shall be found to be correct the expense of such inspection and test shall be borne by the consumer. A uniform reasonable charge shall be fixed by the commission for this service.

Section 71. Upon the complaint in writing of the mayor of a city, the trustees of a village or the town board of a town, or upon the complaint in writing of not less than one hundred consumers or purchasers of gas or electricity in cities of the first and second class, or of not less than fifty in cities of the third class, or not less than twenty-five elsewhere, either as to the illuminating power, purity, pressure or price of

gas or the initial efficiency of the electric incandescent lamp supply, or the regulation of the voltage of the supply system used for incandescent lighting, or the price of electricity sold and delivered in such municipality, the commission shall investigate as to the cause for such complaint.

Section 72. Before proceeding under a complaint presented as provided in section 71, the commission shall cause notice of such complaint, and the purpose thereof, to be served upon the person or corporation affected thereby. Such person or corporation shall have an opportunity to be heard in respect to the matters complained of at a time and place to be specified in such notice. After a hearing and investigation, the commission within lawful limits may, by order, fix the maximum price of gas or electricity to be charged by such corporation or person, or may order such improvement in the manufacture or supply of such gas, in the manufacture, transmission or supply of such electricity, or in the methods employed by such person or corporation, as will in its judgment improve the service.

*The Wisconsin bill:*

Section 43. Upon a complaint made against any public utility by any mercantile, agricultural or manufacturing society or by any body politic or municipal organization or by any twenty-five persons, firms, corporations or associations, that any of the rates, tolls, charges or schedules or any joint rate or rates are in any respect unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act whatsoever affecting or relating to the production, transmission, delivery or furnishing of heat, light, water or power or any service in connection therewith or the conveyance of any telephone message or any service in connection therewith is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, measurements, practice or act complained of shall be entered by the commission without a formal public hearing.

Section 44. The commission shall, prior to such formal hearing, notify the public utility complained of that a complaint has been made, and ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinafter provided.

Section 45. The commission shall give the public utility and the complainant, if any, ten days' notice of the time and place when and where such hearing and investigation will be held and such matters considered and determined. Both the public utility and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses.

Section 51 provides that in case of investigations on the motion of the commission "Notice of the time and place for such hearing shall be given to the public utility and to such other interested persons as the commission shall deem necessary as provided in section 45."

#### COMPLAINTS BY UTILITIES.

*The New York bill* in section 27, provides that the commission may upon the application of the railroad corporation in interest, order the discontinuance of a switch connection.

*The Wisconsin bill*, section 52. Any public utility may make complaint with like effect as though made by any person, firm, corporation or association, mercantile, agricultural or manufacturing society, body politic or municipal organization. See section 43.

Section 105. 5. Any public utility being dissatisfied with any order of the commission made under the provisions of this section, may commence an action against it in the circuit court in the manner provided in sections 64 to 72, inclusive of this act, which action shall be tried and determined in the same manner as is provided in said sections.

#### COMPLAINT AGAINST COMMISSION.

*The New York bill*, by implication, recognizes the right of a public utility to complain against the orders of a commission, in the following clause in section 59:

"If the defendant in such action (to recover penalties or forfeitures) shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order of the commission that defendant was actually and in good faith prosecuting a suit, action or proceeding in the courts to set aside such order, the court shall remit the penalties or forfeitures incurred during the pendency of such suit, action or proceeding."

#### *The Wisconsin bill:*

Section 64. The utility or any person in interest may have recourse to the courts when dissatisfied with any order of the commission fixing rate or regulation.

Section 83. The utility or the municipality may have recourse to the courts when dissatisfied with determination of the commission relative to price or terms for municipal purchase.

#### SUMMARY PROCEEDINGS TO ENFORCE OBEDIENCE TO ORDERS OF COMMISSIONS.

#### *The New York bill:*

Section 21. All actions and proceedings under this act, and all actions and proceedings commenced or prosecuted by order of either com-

mission, and all actions and proceedings to which either commission or the people of the state of New York may be parties, and in which any question arises under this act or under the railroad law, or under or concerning any order or action of the commission, shall be preferred over all other civil causes except election causes in all courts of the state of New York and shall be heard and determined in preference to all other civil business pending therein excepting election causes, irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the commission in any action or proceeding in which he may be allowed to intervene.

Section 57. Whenever either commission shall be of opinion that a common carrier, railroad corporation or street railroad corporation subject to its supervision is failing or omitting or about to fail or omit to do anything required of it by law or by order of the commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the commission, it shall direct counsel to the commission to commence an action or proceeding in the supreme court of the state of New York in the name of the commission for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunction. Counsel to the commission shall thereupon begin such action or proceeding by a petition to the supreme court alleging the violation complained of and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify the time not exceeding twenty days after service of a copy of the petition, within which the common carrier, railroad corporation or street railroad corporation complained of must answer the petition. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirement. Such other persons or corporations as the court shall deem necessary or proper to join as parties in order to make its order, judgment or writs effective, may be joined as parties upon application of counsel to the commission. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a writ of mandamus or an injunction or both issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief.

Section 74. Applies section 57 to gas and electric corporations.

*The Wisconsin bill* depends upon actions for the recovery of penalties and forfeitures to secure obedience to the orders of the commission and it makes it the duty of the attorney general or the district attorney of the proper county to aid the commission.

Section 102. 2. Upon the request of the commission it shall be the duty of the attorney general or the district attorney of the proper

county to aid in any investigation, hearing or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act and of all other laws of this state relating to public utilities and for the punishment of all violations thereof.

3. Any forfeiture or penalty herein provided shall be recovered and suit therein shall be brought in the name of the state of Wisconsin in the circuit court for Dane county. Complaint for the collection of any such forfeiture may be made by the commission or any member thereof, and when so made the action so commenced shall be prosecuted by the attorney general.

4. The commission shall have authority to employ counsel in any proceeding, investigation, hearing or trial.

#### POWERS OF REGULATION CONFIRMED TO MUNICIPALITIES.

##### *The New York Bill:*

Section 77. If in any city of the first or second class there now exists or shall hereafter be created a board, body or officer having jurisdiction of matters pertaining to gas or electric service, such board, body or officer shall have and may exercise such power, jurisdiction and authority in enforcing the laws of the state and the orders, rules and regulations of the commission as may be prescribed by statute or by the commission.

##### *The Wisconsin Bill:*

Section 87. Every municipal council shall have power:

(1) To determine, by contract, ordinance or otherwise the quality and character of each kind of product or service to be furnished or rendered by any public utility furnishing any product or service within said municipality and all other terms and conditions not inconsistent with this act upon which such public utility may be permitted to occupy the streets, highways or other public property within such municipality and such contract, ordinance or other determination of such municipality shall be in force and prima facie reasonable. Upon complaint made by such public utility or by any qualified complainant as provided in sections 1797m—43, the commission shall set a hearing as provided in sections 1797m—45 and 1797m—46 and if it shall find such contract, ordinance or other determination to be unreasonable, such contract, ordinance or other determination shall be void.

(2) To require of any public utility by ordinance or otherwise such additions and extensions to its physical plant within said municipality as shall be reasonable and necessary in the interest of the public, and to designate the location and nature of all such additions and extensions, the time within which they must be completed and all conditions



under which they must be constructed subject to review by the commission as provided in subdivision 1 of this section.

(3) To provide for a penalty for non-compliance with the provisions of any ordinance or resolution adopted pursuant to the provisions hereof.

(4) The power and authority granted in this section shall exist and be vested in said municipalities, anything in this act to the contrary notwithstanding.

#### COURT REVIEW.

*The New York bill* is drawn on the assumption that the rights of persons, corporations and bodies politic to resist the enforcement of orders issued by the commission are amply protected by provisions in existing laws. The only recognition of such a right to be found in this bill is in the clause in *section 59* above quoted.

#### *The Wisconsin Bill:*

Section 64. (1) Any public utility and any person or corporation in interest being dissatisfied with any order of the commission fixing any rate or rates, tolls, charges, schedules, joint rate or rates or any order fixing any regulations, practices, act or service may commence an action in the circuit court for Dane county against the commission as defendant to vacate and set aside any such order on the ground that the rate or rates, tolls, charges, schedules, joint rate or rates, fixed in such order is unlawful, or that any such regulation, practice, act or service fixed in such order is unreasonable, in which action the complaint shall be served with the summons.

2. The answer of the commission to the complaint shall be served and filed within ten days after service of the complaint, whereupon said action shall be at issue and stand ready for trial upon ten days' notice to either party.

3. All such actions shall have precedence over any civil cause of a different nature pending in such court, and the circuit court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions.

Section 65. Every proceeding, action or suit to set aside, vacate or amend any determination or order of the commission or to enjoin the enforcement thereof or to prevent in any way such order or determination from becoming effective, shall be commenced, and every appeal to the courts or right of recourse to the courts shall be taken or exercised within ninety days after the entry or rendition of such order or determination, and the right to commence any such action, proceeding or suit or to take or exercise any such appeal or right of recourse to the courts, shall terminate absolutely at the end of such ninety days after such entry or rendition thereof.

Section 66. No injunction shall issue suspending or staying any order of the commission, except upon application to the circuit court or presiding judge thereof, notice to the commission, and hearing.

Section 67. 1. If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission or its authorized agent, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission and shall stay further proceedings in said action for fifteen days from the date of such transmission.

2. Upon the receipt of such evidence the commission shall consider the same and may alter, modify, amend or rescind its order relating to such rate or rates, tolls, charges, schedules, joint rate or rates, regulations, practice, act or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

Section 68. 1. If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the commission in the first instance.

2. If the original order shall not be rescinded or changed by the commission judgment shall be rendered upon such original order.

Section 69. Either party to said action within sixty days after service of a copy of the order or judgment of the circuit court, may appeal to the supreme court. Where an appeal is taken the cause shall, on the return of the papers to the supreme court, be immediately placed on the state calendar of the then pending term and shall be assigned and brought to a hearing in the same manner as other causes on the state calendar.

Section 70. In all trials, actions and proceedings arising under the provisions of this act or growing out of the exercise of the authority and powers granted herein to the commission, the burden of proof shall be upon the party adverse to such commission or seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfactory evidence that the determination, requirement, direction or order of the commission complained of is unreasonable or unlawful as the case may be.

Section 83. Gives the right to the public utility to appeal to the courts for review of value or terms fixed by the commission for purchase by municipality.

## ANNUAL REPORTS OF COMMISSIONS.

*The New York bill:*

Section 16. All proceedings of each commission and all documents and records in its possession shall be public records, and each commission shall make an annual report to the legislature on or before the second Monday of January in each year, which shall contain copies of all orders issued by it, and any information in the possession of the commission which it shall deem of value to the legislature and the people of the state. Five hundred copies of each report, together with abstracts of the reports to such commission of common carriers, railroad corporations and street railroad corporations, and gas and electrical corporations, in addition to the regular number prescribed by law, shall be printed as a public document of the state, bound in cloth, for the use of the commissioners and to be distributed by them in their discretion to railroad, street railroad, gas and electrical corporations and other persons interested therein.

*The Wisconsin bill:*

Section 19. 1. The commission shall publish annual reports showing its proceedings and showing in tabular form the details per unit as provided in section 1797m—18 for all the public utilities of each kind in the state, and such monthly, or occasional reports as it may deem advisable.

2. The commission shall also publish in its annual reports the value of all the property actually used and useful for the convenience of the public and the value of the physical property actually used and useful for the convenience of the public, of every public utility as to whose rates, charges, service or regulations any hearing has been held by the commission under section 1797m—45 and 1797m—46 or the value of whose property has been ascertained by it under section 1797m—5.

Section 20. All facts and information in the possession of the commission shall be public and all reports, records, files, books, accounts, papers and memoranda of every nature whatsoever in their possession shall be open to inspection by the public at all reasonable times except as provided in section 21.

Section 21. 1. Whenever the commission shall determine it to be necessary in the interest of the public to withhold from the public any facts or information in its possession, such facts may be withheld for such period after the acquisition thereof not exceeding ninety days as the commission may determine.

2. No facts or information shall be withheld by the commission from the public for a longer period than ninety days nor be so withheld for any reason whatsoever other than in the interest of the public.

## PAYMENT OF THE EXPENSES OF COMMISSION.

*The New York bill:*

Section 13 fixes the salaries of the commissioners; counsel to the commission; secretary to the commission, and provides that all officers, clerks, inspectors, experts and employes of a commission, and all persons appointed by the counsel of a commission shall receive the compensation fixed by the commission.

The commissioners, counsel to a commission and the secretary to a commission, shall have reimbursed to them all actual and necessary traveling and other expenses and disbursements incurred or made by them, their officers, clerks, inspectors, experts and other employes, in the discharge of their official duties.

Section 14. 1. The salaries of the commissioners, the counsel to the commission, and the secretary to the commission in the first district shall be audited and allowed by the state comptroller, and paid monthly by the state treasurer upon the order of the comptroller out of funds provided therefor.

“All other salaries and expenses of the commission of the first district shall be audited and paid by the city of New York.”

2. All salaries and expenses of the commission in the second district shall be audited and allowed by the state comptroller and paid monthly by the state treasurer upon the order of the comptroller, out of funds provided therefor.

Section 88. There shall be appropriated for the use of the commission, and for the payment of salaries and disbursements under this act, from money not otherwise appropriated, the sum of three hundred thousand dollars, or so much thereof as may be necessary.

*The Wisconsin bill:*

Section 14. 1. The commission shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the commission.

2. The agents, accountants or examiners employed by the commission shall have authority under the direction of the commission to inspect and examine any and all books, accounts, papers, records and memoranda kept by such public utilities.

Section 107. A sum sufficient to carry out the provisions of this act is appropriated out of any money in the state treasury not otherwise appropriated.

## EXPENSES OF COMMISSIONS.

(From official sources.)

## WISCONSIN.

The expenses of the Wisconsin commission last year were, in round numbers, \$100,000.

## NEW YORK.

As will be seen by reference to Mr. Lapp's analysis of the law, New York has two public service commissions; the commission of the first district, with jurisdiction limited to New York city, and the commission of the second district, with jurisdiction over the remainder of the state. The expenditures are here given separately.

## FIRST DISTRICT.

The expenditures for this district in 1908 were \$983,000, of which \$747,000 was paid in salaries. Following is the latest statement from the commission: "The employes of the commission number more than 600 and the total pay-roll is about \$70,000 per month. The annual expenditures of the commission amount to about \$1,000,000 of which amount \$91,000 is paid by the state and the balance by the city of New York. Fully 60% of the expenditures of the commission go to the maintenance of a large engineering force engaged in the preparation of plans and supervision of construction of subways." -

## SECOND DISTRICT.

The expenditures for this district are reported as follows: For 1908, \$307,734.05; for 1909, \$276,575.41; for 1910, \$295,443.08. Appropriation for 1911, \$372,830. These sums do not include the state's portion for grade crossing elimination. There was appropriated for this purpose in 1911, \$350,000.

## RESULTS.

The New York Public Service Commission of the first district claims in two years to have saved the railway companies and the people of New York city \$3,000,000 in the prevention of accidents alone. The general opinion seems to be that the commission has more than paid its way. Periodical literature on the subject, almost without exception, is favorable to the commission. There are a few dissenting voices, however. Charles H. Young, of New York city, is quoted in *Collier's Weekly*, October 22, 1910, as saying: "We need more economy in state management and the abolition of useless and extravagant frills. For example, the Public Service Commission costs the tax payers more than \$1,000,000 a year and does nothing."

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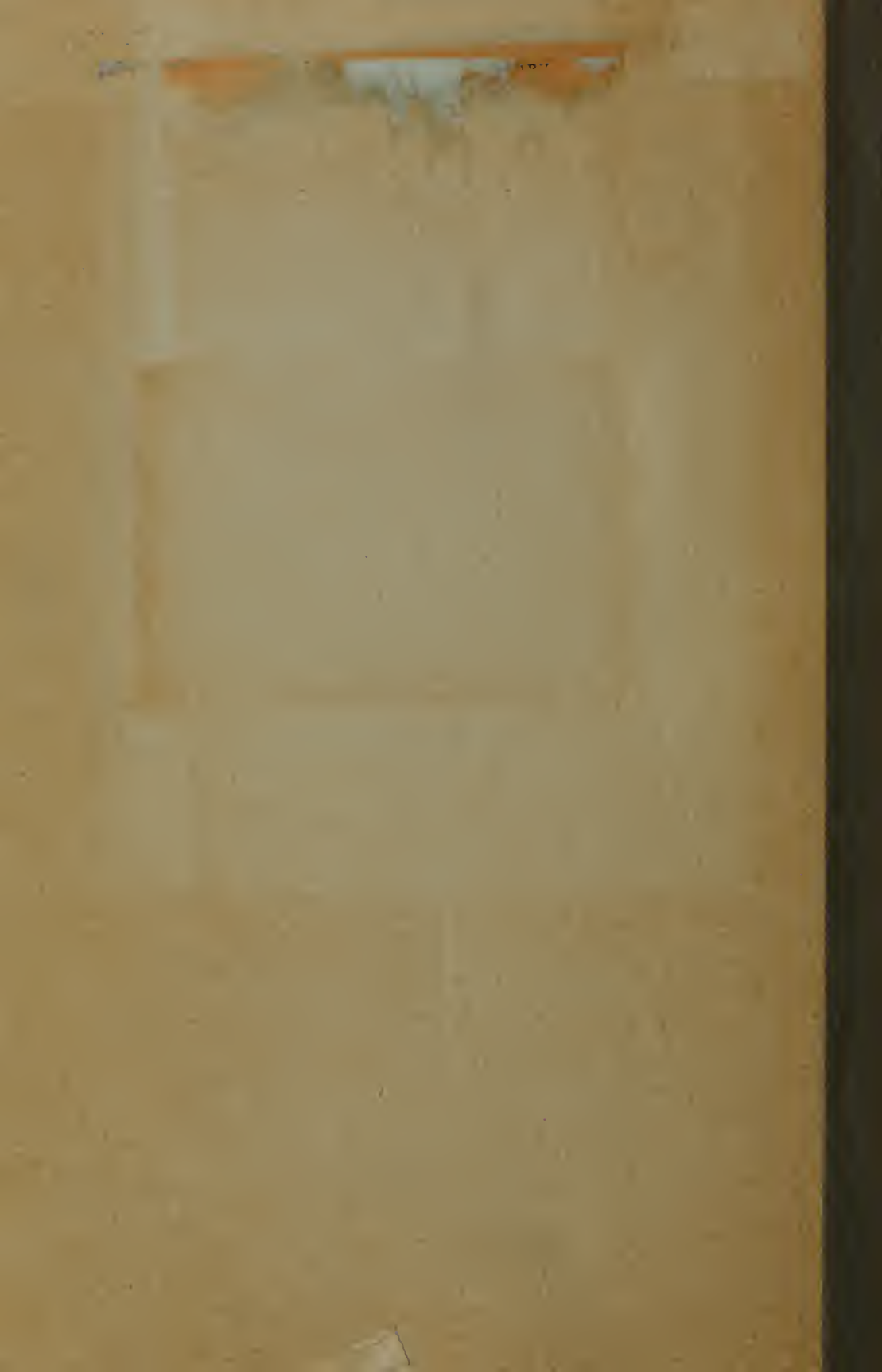
A detailed analysis of the New York law.

#### LAWS AND BILLS.

Copies of public service commission laws of the different states and of bills introduced in the General Assembly of Ohio and of other states are kept on file in the Legislative Reference Department of the Ohio State Library. Reports of the New York and Wisconsin commissions may also be consulted there.







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